**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929**

**WP(C).No. 29293 of 2003(K)**
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**PETITIONER:**
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**K.C.LUCY, AGED 54 YEARS, W/O.JACOB,**
**RESIDING AT VADAKKAN AMBAZHAPPILLY,**
**CHITTILAPPALLY, THRISSUR,**
**NOW WORKING AS L.P SCHOOL ASSISTANT,**
**RM L.P SCHOOL AT VELOOR.**

**BY ADV. SRI.P.JACOB VARGHESE,**
**SMT.V.A.GANGUJA,**
**SRI.VIVEK VARGHESE P.J,**
**SMT.VINEETHA NARAYANAN.**

**RESPONDENTS:**
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1. **STATE OF KERALA, REP. BY SECRETARY,**
   **GENERAL EDUCATION, OFFICE OF THE SECRETARY**
   **TO GENERAL EDUCATION, THIRUVANANTHAPURAM.**

2. **THE HEAD MISTRESS, R.M.L.P.SCHOOL,**
   **VELOOR, KUNNAMKULAM, CHAVAKKAD.**

3. **ASSISTANT EDUCATIONAL OFFICER,**
   **KUNNAMKULAM.**

4. **ACCOUNTANT GENERAL, STATE OF KERALA,**
   **THIRUVANANTHAPURAM.**

**BY GOVERNMENT PLEADER SMT. T.B. RAMANI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.29293/2003:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE RELEVANT PAGES OF SERVICE BOOK.**

**EXT.P.2: COPY OF THE AUDIT REPORT NO.2 ISSUED BY DEPUTY DIRECTOR OF EDUCATION, THRISSUR.**

**EXT.P.3: COPY OF THE FIRST AND LAST PAGES OF STATEMENT PREPARED BY R.2.**

**//TRUE COPY//**

**prv.**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**WP(C).No.29293 of 2003-K**

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Dated this the 12th day of September, 2007.

**JUDGMENT**

1. Petitioner was a Lower Primary School Assistant. It appears that she availed leave without allowances for 81 days from 15-7-1976 to 4-10-1976. That situation was obtained by regularizing the period during which she was out of service on private affairs. Thereafter, she was granted an increment with effect from 1-7-1977. She enjoyed the fruits of that increment by drawing pay and allowances as an LPSA, obviously, applying those funds for her sustenance and also for the benefit of her family. On 18-1-2003, an audit report led to the stand being taken that the increment sanctioned with effect from 1-7-1977 was irregular and accordingly, there ought to be a pay fixation rectifying that irregularity which, in turn,

has resulted in the impugned recovery from the DCRG of the petitioner who retired from service on 30-4-2004.

2. On the peculiar facts and in the circumstances of the case in hand, the lower primary school assistant being forced to suffer a recovery on account of a wrong fixation and grant of an increment more than 2 ½ decades before her retirement, would be unjust and will result in hardship and unavoidable agony to that teacher. Under such circumstances, the impugned recovery cannot stand. This view is fortified by the judgment of the Apex Court in **Aleyamma Varghese** v. **Secretary, General Education Department** [2007 (3) KLT 700]. It can also be seen that the increment granted with effect from 1-7-1977 was apparently not on the basis of any misrepresentation of the petitioner.

In the result, this writ petition is allowed quashing all proceedings for recovery on the basis of Ext.P2 audit report, however sustaining the fixation of pension on the basis of the objection that the petitioner was not entitled

to an increment as on 1-7-1977. This means that there shall be no recovery from the petitioner or her DCRG while her pension could be fixed on the basis that the increment sanctioned with effect from 1-7-1977 was irregular. The amounts due to the petitioner following this judgment shall be released to her within an outer limit of three months from the date of receipt of a copy of this judgment, without fail. No costs.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

Sha/